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In the

Supreme Court of the United States

October Term, 1967

No. 571

JOSEPH SCATA, *Petitioner*

vs.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States.

The Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in this case on July 5, 1967.

OPINION BELOW

The opinion of the Court of Appeals is thus far unreported, and is reprinted in Appendix A.

JURISDICTION

The jurisdiction of this court is invoked under 28 United States Code, Section 1254 (1).

STATUTORY PROVISIONS

The statutes involved are 18 United States Code, Section 152 and 18 United States Code, Section 3237 (a). Appendix B.

STATEMENT OF THE CASE

The defendant, Joseph J. Scata, appeals a conviction upon an indictment charging him with concealing assets of a bankrupt estate, in five Counts, and one Count of conspiracy to conceal.

In late 1962, Irwin Gordon, Nunzio Scata and Joseph Scata associated together in a retail enterprise known as National Furniture and Appliance Stores, Incorporated. The enterprise operated three retail outlets in Connecticut, one in Rocky Hill, Connecticut; one in Southington, Connecticut; and one in Hartford, Connecticut. The Hartford and Southington outlets were doing very poorly so, in early 1963, the officers began to withdraw merchandise from these locations to center it in the Rocky Hill outlet.

Starting in January, 1963, the principals decided to develop the enterprise with a Newburgh, New York store, as well as those in Connecticut. Upon the advice of their accountant, this phase of the operation was incorporated separately under the law of the State of New York, after the store was opened in Newburgh.

Apparently, the retail operation in Newburgh showed evidence of some success; but, the Connecticut operations were on the decline, especially in the Southington and Hartford stores. In an effort to keep the Newburgh operation running, there were a series of deliveries of merchandise from the Con-

necticut stores to the Newburgh store. In some instanecs, the new purchases were paid directly to the vendor by the Newburgh store. In others, there were bills prepared to show the amounts due from the Newburgh account for merchandise transferred from Connecticut. The Connecticut corporation had acquired a Ford truck that was brought to Newburgh, New York, sometime in February of 1963. This truck was appraised for the Trustee at a value of $130.00 It was not listed on the corporation's response to the involuntary petition, signed by Gordon, as a corporate asset. The Trustee testified that no defendant was trying to hide the truck from the Trustee; and, that after Joseph Scata told the Trustees that the truck was an asset of the bankrupt estate, the Trustee and the defendant, Joseph Scata, agreed to its sale for $200.00. A check, in payment, was tendered on November 20, 1963. The check was not deposited for four (4) months and the checking account upon which it was drawn was closed by that time. The check had been held because of other negotiations between the Trustee and the defendant upon other matters involvd in the bankrupt estate. The truck was not concealed or hidden away but was openly in use. The indictment charged Joseph Scata with knowingly delivering this asset to Newburgh, New York, for the purpose of concealment (Count I).

The defendant testified that a bank account has been opened in January, 1963, with a $500.00 deposit in a Newburgh, New York bank. This account was started by a transfer of funds from a Connecticut bank. Thereafter, Scata and his wife, together with his brother and sister-in-law, quaranteed a $15,000.00 loan from a New York bank to finance the Newburgh operation for the bankrupt corporation. Scata covered the final $5,000.00 of that guarantee personally. In addition, Scata advanced $1,000.00 to the Connecticut operation less than 30 days before the involuntary petition was filed.

The primary method of establishing concealment was through two "experts" who were permitted, over objection, to use exhibits for identification as a predicate for a theory of gross purchases, less bank deposits, less direct payment, less merchandise on hand. Exhibits 7 and 8 were never offered as full exhibits. The "experts" testified that they did not know if they had all the records. They did not credit bad debts, returned merchandise, water damaged merchandise, accounts receivable, mysterious disappearance and outright theft, and charges to loan accounts. The two experts indicated differing totals. Rosenquist's opinion showed "concealment of approximately $55,000.00 worth of goods. Farrell, using the same theory, but with a different approach, showed $70,000.00 diverted.

Joseph Scata was convicted by the jury on Counts One, Three, Four, Six, Seven and Eight.

Associate Justice Fortas extended the time to file this Petition to September 3, 1967.

ISSUES PRESENTED

I. The prosecution failed to establish venue.

II. The prosecution failed to prove concealment from the Trustee, because the alleged acts were performed prior to the appointment of a trustee.

III. The testimony admitted with respect to an Exhibit for Identification is reversible error.

ARGUMENT

I. *The Prosecution Failed to Establish Venue*

Title 18 United States Code, Section 3237 (a) permits prosecution of an offense "in any district in which such offense was begun, continued or completed," *provided* the offense was "begun in one district and completed in another, or committed in more than one district."

The question involved in the instant case is whether the alleged concealment began in Connecticut and was completed in New York, or whether the concealment was committed in both Connecticut and New York. Petitioner contends that the only possible conclusion that can be reached is that the alleged concealment did not begin on Connecticut, or, was not committed in New York and Connecticut, thus rendering Section 3237 inapplicable.

All of the evidence with respect to the truck, except delivery from Connecticut, was confined to activity occurring in New York. Similarly, all activity with respect to the bank account, except the transfer of funds from a Connecticut bank, occurred in New York.

Petitioner contends that no offense was committed in Connecticut, because the activity alleged as having occurred in Connecticut was shown to have transpired prior to the appointment of a Trustee. There could not have been a concealment from the Trustee prior to his appointment, *United States v. Schireson*, 116 F.2d 881 (3rd Circuit, 1940); *Edwards v. United States*, 265 F.2d 302 (9th Circuit, 1959). Consequently, the alleged acts of concealment, relevant to the offense charged, could only have been committed in New York. The Connecticut venue was improper, and not within the provisions of Section 3237.

In *United States v. Cores*, 365 United States 405, 407, this Court indicated that statutes determining venue in criminal prosecutions should "respect such considerations" as the Constitutional mandate of prosecution in the district in which the offense was committed, and the hardships entailed in not observing that mandate. And in *United States vs. Johnson*, 323 United States 273, this Court stated at page 276:

"If an enactment of Congress equally permits the underlying spirit of the constitutional concern for trial in the vicinage to be respected rather than to be disrespected, construction should go in the direction of constitutional policy even though not commanded by it."

The "constitutional policy" underscored by the court, amounts almost to a directive that broad construction be given to statutes of venue, so that, unless a travesty on the statutory language is evident, they should be construed as confining venue to the vicinage. No such liberal interpretation of Section 3237 was given by the Court of Appeals. The latter court acknowledged that "the crime charged is concealment from the Trustee . . ." (See page 3 of the Court's opinion.) And this acknowledgement seemingly reinforced our position that no concealment could have occurred until the Trustee was appointed. However, by the court's opinion, the criminal acts were not to be the basis of venue; rather, the effect of those acts on the Trustee, whose situs was Connecticut, permitted the latter district venue authorized by the statute. Venue has thus been likened to a web, the tentacles of which are capable of reaching into the remotest district and forming the basis of a prosecution. The situs of one affected by the offense as opposed to the situs of the alleged offender, or his alleged criminal activity is the test, according to the opinion below. Petitioner contends that the court below erred in its determination of the considerations involved with respect to proper venue.

II. *The Prosecution Failed to Prove Concealment from the Trustee*

The decision of the Court of Appeals is in conflict with an earlier decision, in the same Circuit, *United States v. Stone*, 282 F.2d 547 (2nd Circuit, 1960) where the court took great care to explain that the defendant could be convicted only if it were shown that he concealed the property, or its proceeds, after the Trustee was appointed. As the court explained in *Stone, supra*, the issue was whether the defendant still had possession of the merchandise or the proceeds on the day the Trustee was appointed. If he didn't, he could not be said to have concealed them.

"It is clear that, if this money had been expended legitimately by the bankrupt before the trustee was appointed, there was and could be no concealment of property which belonged to the bankrupt because at the time the trustee qualified it would not belong to him."

Hersh v. United States, 68 F.2d 799, 804.

The evidence at the trial showed that transfers were made from the Rocky Hill store to the Newburgh store, because the latter was having considerably more success, sales-wise. The cash transferred to the Newburgh store was also intended for use there. The transfer of these items for use by another store, prior to the appointment of the Trustee, cannot be held to be a "concealment." See *United States v. Schireson*, 116 F.2d 881 (3rd Circuit, 1941) where the court said that even if the defendant gave money to a third person, in contemplation of bankruptcy, he would not be guilty of concealment unless the funds were on hand when the point of bankruptcy was reached. So, in the case at bar, there was no evidence that the property allegedly "concealed" was on hand at the time the Trustee was appointed. Absent the proof that the defendant had possession

of the property on the date the Trustee was appointed, he would not have been convicted of "concealing" it.

III. *The Testimony with Respect to an Exhibit for Identification is Reversible Error*

With respect to the "shortages" of merchandise, two "experts" testified that, in their opinion, certain merchandise had not been accounted for on the schedules. The government did not introduce into evidence the records of the Rocky Hill store which formed the basis of the expert testimony. The "expert" testimony should have been excluded, because the basis for the opinion was not in evidence. See *Raub v. Carpenter*, 187 United States 159.

In dismissing this contention, the Court of Appeals, firstly, transformed the claimed error into a claim that the best evidence rule had been violated; and, secondly, excused the "inadvertent" failure to introduce the records into evidence, stating that the records were available in court for use by the defense.

The ruling by the Court of Appeals, on the admissibility of opinion evidence from an exhibit not properly introduced into evidence, was prejudicial error. Cf. *McCormick on Evidence*, Chapter 3, Section 14.

CONCLUSION

For the reasons stated it is respectfully submitted that the court grant this petition.

Respectfully,

W. PAUL FLYNN
FRANK J. RACCIO
Counsel for the Petitioner

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 481 — September Term, 1966

(Argued June 7, 1967 Decided July 5, 1967)

Docket No. 31128

UNITED STATES OF AMERICA,
Appellee,

v.

IRWIN GORDON AND JOSEPH SCATA,
Appellants.

Before:

MOORE, FRIENDLY AND ANDERSON,
Circuit Judges.

Appeal from a judgment of conviction by the United States District Court for the District of Connecticut of bankruptcy fraud in violation of 18 U.S.C., Section 152 after a trial before M. Joseph Blumenfeld, Judge, and a jury. The appellants Irwin Gordon and Joseph J. Scata attack the sufficiency of the evidence and the form of the indictment.

Affirmed.

IRWIN GORDON, pro se.

W. PAUL FLYNN, New Haven, Connecticut, (Joel N. Lee, Miami Beach, Florida, Kopkind & Flynn, New Haven, Connecticut, on the brief), for the appellant Scata.

JON O. NEWMAN, United States Attorney for the District of Connecticut, Hartford, Connecticut, for the appellee.

MOORE, Circuit Judge:

Irwin Gordon and Joseph J. Scata appeal from judgments of conviction for bankruptcy fraud in violation of 18 U.S.C., Section 152 after a trial before a jury. Both appellants attack the form of the indictment and Scata additionally attacks the venue and the sufficiency of the evidence of guilt. We affirm.

The evidence tended to show that Gordon and Scata were, respectively, the president and secretary of a Connecticut corporation which operated retail discount stores in that state including one at Rocky Hill. The Rocky Hill store was opened in September of 1962 and closed in May of the following year. The Connecticut corporation was adjudicated a bankrupt in June and it is in connection with this bankruptcy that fraud is alleged. In January of 1963, the appellants opened another store of a similar nature in Newburgh, New York, which was owned by a separate New York corporation. Beginning at once and continuously with increasing frequency until the closing of the Rocky Hill store, substantial amounts of merchandise were transferred from Connecticut to New York. In addition,

cash arising from the operation of the Connecticut store was transferred to a bank account opened in Newburgh for the use of the Newburgh store. The Trustee in bankruptcy was never told of the bank account.

At the trial, the prosecution offered the expert testimony of two accountants to show the extent of the misappropriation of merchandise. Both testified that the value of merchandise purchased as represented by vouchers less the value of the goods sold as represented by the proceeds appearing in bank statements less the value of goods on hand at the time of bankruptcy left an unexplained absence of over $50,000 worth of merchandise. In this analysis, appellants were given credit for some $24,000 worth of goods which had been shipped to New York but had been paid for by that store.

The evidence also showed that fictitious invoices were prepared to cover a part of the missing inventory but that there were no bank deposits to indicate that payment had been made for the goods covered by these invoices. And under the direction of the appellants, inflated insurance claims were prepared following a minor robbery. In addition, there was a substantial amount of evidence of fraudulent intent which need not be detailed here.

Appellants each raise a number of errors alleged to have been committed below. We have examined each and find that no error or accumulation of errors was committed that would warrant a reversal. Indeed, most of the claims are so lacking in merit that discussion would serve no useful purpose. In any event, since the sentences on each count run concurrently, the only errors which we need consider are those relating to the entire trial and to Count VII, the principal accusation. *Hirabayashi v. United States*, 320 U.S. 81 (1943).

A. THE INDICTMENT

Both appellants were charged in a single, eight-count indictment. No question is raised concerning Counts II and V and they will not be considered further. Counts I and IV charged violations of Section 152, paragraph 1, which relates to concealing assets of the bankrupt's estate from the Trustee. Count IV covered the bank account and Count I covered a truck which belonged to the Rocky Hill store but was removed to New York.

Counts III and VI charged violations of Section 152, paragraph 6, which prohibits transferring assets in contemplation of bankruptcy or with an intent to defeat the bankruptcy laws, again by concealing the truck and the bank account.

Count VII charged a violation of paragraph 6 through the transfer of the merchandise and this was the heart of the indictment.

Count VIII charged a conspiracy to violate Section 152, paragraphs 1, 2 and 6, by committing the substantive crimes previously charged and enumerated a variety of overt acts.

Both appellants claim that the failure to consolidate some or all of these counts was reversible error. This argument has no merit. It is beyond dispute that the separate paragraphs of Section 152 create separate crimes, the violation of which may be indicted separately. See, e.g., *United States v. Schireson*, 116 F.2d 881 (3 Cir., 1940). And it has been held that separate transfers in violation of paragraph 6 constitute separate offenses. *Dranow v. United States*, 407 F.2d 545 (8 Cir., 1962), *United States v. Shapiro*, 101 F.2d 375 (7 Cir., 1939). The only possible error, therefore, was the failure to consolidate Counts I and IV but we are unable to find the slightest preju-

dice to appellants. This was not a case where each transfer of money into the bank account was treated as a separate offense. See *Edwards v. United States*, 265 F.2d 302 (9 Cir., 1959). And since the sentences of each appellant on each count are to run concurrently, they cannot complain of a failure to consolidate two of the more minor counts of an eight-count indictment.

In any event, appellants have waived their rights to have this question considered on appeal. A pre-trial motion to consolidate was denied on the ground that the resolution of such a motion should be deferred until trial. The motion, however, was not renewed at trial and the appellants proceeded without further objection to this aspect of the indictment.

B. SUFFICIENCY OF THE EVIDENCE

Appellant Scata asserts that the evidence relating to Count VII, the transferred merchandise, was insufficient in several respects. First, he argues that the government's case was fatally defective because of the inadvertent failure to introduce into evidence the records of the Rocky Hill store which formed the basis of the expert testimony. As it is not disputed that these records were in court and available to the defense, the most this argument suggests is a formal violation of the best evidence rule. Certainly, if these records had been destroyed, the experts could have testified to their contents. *Corbett v. United States*, 238 F.2d 557 (9 Cir., 1956). Because these records were available to the defense for use in cross-examination or otherwise, appellants cannot demonstrate any possible prejudice requiring reversal.

Second, appellant contends that because it does not appear that all of the corporate records were before the experts, their

testimony was incompetent. There is no suggestion that the government suppressed evidence and, in fact, it does not appear to be disputed that the principal reason for the absence of some records was that the appellants failed to produce them in accordance with the Trustee's demand. Nor do we understand the appellants to claim that the absence of some records was necessarily prejudicial to them for they do not contest the assertion of the government that the missing records would be more damning than redeeming to the appellants. We are of the opinion that argumentation concerning any lapses in the government's case and explanation for those lapses, if any, properly would be directed to the jury. It is clear beyond doubt that the government presented adequate evidence of misappropriation of merchandise to go to the jury.

C. VENUE

Scata's attack on the venue is without merit but should be noted. Essentially he argues that the concealment, if any, occurred in New York. But the crime charged is concealment from the Trustee and the situs of the Trustee is Connecticut. It can scarcely be argued that Scata had no duty to disclose to the Trustee a prior concealment in another state. See, e.g., *United States v. Zimmerman*, 158 F.2d 559 (7 Cir., 1946). The proper venue, therefore, is Connecticut. See also 18 U.S.C., Section 3237.

Affirmed.

18 *United States Code, Section* 152. Concealment of assets; false oaths and claims, bribery.

Whoever knowingly and fraudulently conceals from the re-

ceiver, custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or from creditors in any bankruptcy proceeding, any property belonging to the estate of a bankrupt, or

Whoever knowingly and fraudulently makes a false oath or accounting or in relation to any bankruptcy proceeding; or

Whoever knowingly and fraudulently presents any false claim for proof against the estate of a bankrupt, or uses any such claim on any bankruptcy proceeding, personally, or by agent, proxy, or attorney, or as agent, proxy, or attorney; or

Whoever knowingly and fraudulently receives any material amount of property from a bankrupt after the filing of a bankruptcy proceeding, with intent to defeat the bankruptcy law; or

Whoever knowingly and fraudulently gives, offers, receives or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof, for acting or forbearing to act in any bankruptcy proceeding; or

Whoever, either individually or as an agent or officer of any person or corporation, in contemplation of a bankruptcy proceeding by or against him or any other person or corporation, or with intent to defeat the bankruptcy law, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation; or

Whoever, after the filing of a bankruptcy proceeding or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any document affecting or relating to the property or affairs of a bankrupt; or

Whoever, after the filing of a bankruptcy proceeding, knowingly and fraudulently withholds from the receiver, custodian, trustee, marshal, or other officer of the court entitled to its possession, any document affecting or relating to the property or affairs of a bankrupt;

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

18 *United States Code, Section* 3237

A. Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued or completed.

INDICTMENT

The Grand Jury charges:

COUNT ONE

1. On the 8th day of May, 1963, an involuntary petition in bankruptcy was filed in the United States District Court for the District of Connecticut, praying that National Furniture & Appliance Stores, Inc., a corporation organized and existing under the laws of the State of Connecticut, with its place of business at 2128 Silas Deane Highway, Rocky Hill, Connecticut, be adjudicated a bankrupt and in pursuance of said petition, the said National Furniture & Appliance Stores, Inc., was, on the 4th day of June, 1963, adjudicated a bankrupt.

2. On the 8th day of May, 1963, the said bankruptcy proceeding was referred to Saul Seidman, the referee in bankruptcy of the aforesaid court, for the further proceedings in accordance with the bankruptcy laws.

3. Thereafter, on the 15th day of May, 1963, Sidney Waingrow was appointed Receiver in the aforesaid proceedings and on the 3rd day of July, 1963, Abraham A. Katz was appointed Trustee of the estate of the said bankrupt.

4. During all of the times hereinafter mentioned, IRWIN GORDON, a defendant herein, was the President of the said bankrupt; NUNZIO SCATA, a defendant herein, was the Vice President of the said bankrupt; and JOSEPH J. SCATA, a defendant herein, was the Secretary-Treasurer of the said bankrupt.

5. At the time of the adjudication of the said National Furniture & Appliance Stores, Inc. as a bankrupt and continuously thereafter until the date upon which the property was discovered, only a part of the assets have been made available to the officers of the Court, appointed as aforesaid, and to creditors of the said bankrupt, whereas preceding the filing of the said bankruptcy petition, the said bankrupt had substantial property, including, among other things, a 1954 Ford van-type truck, green with a deep blue body with "Lombardi's" painted on the sides.

6. On or about the 1st day of May, 1963, the exact date being unknown to the Grand Jurors, and continuously thereafter until the date upon which the property was discovered in the District of Connecticut, the said National Furniture & Appliance Stores, Inc., a corporation, and IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA, knowingly and

fraudulently did conceal from Sidney Waingrow and Abraham A. Katz, Receiver and Trustee respectively, as aforesaid, and from creditors in the said proceeding, property belonging to the estate of the said bankrupt, consisting of a 1954 Ford van-type truck, green with a deep blue body with "Lombardi's" painted on the sides, in that the defendants did during the period aforesaid remove from the aforesaid premises of the bankrupt, the said property and did deliver the same to National Discount Stores at 303 Broadway, Newburgh, New York, for the purpose and with the intent of concealing such property.

All in violation of Title 18, United States Code, Section 152.

COUNT THREE

1. The Grand Jury realleges all of the allegations of Paragraphs 1 to 5, inclusive, of Count One of this Indictment.

2. On or about the 1st day of March, 1963, the exact date being unknown to the Grand Jurors, in the District of Connecticut, IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA as officers of the National Furniture & Appliance Stores, Inc., the bankrupt, and in contemplation of a bankruptcy proceeding by and against the National Furniture & Appliance Stores, Inc., and with intent to defeat the bankruptcy laws, knowingly and fraudulently did transfer and conceal property of the said National Furniture & Appliance Stores, Inc., that it, a 1954 van-type truck, green with a deep blue body with "Lombardi's" painted on the sides.

All in violation of Title 18, United States Code, Section 152.

COUNT FOUR

1. The Grand Jury realleges all of the allegations of Paragraphs 1 to 4, inclusive, of Count One of this Indictment.

2. At the time of the adjudication of the said National Furniture & Appliance Stores, Inc. as a bankrupt, and continuously thereafter until the date upon which the property was discovered, only a part of the assets have been made available to the officers of the Court, appointed as aforesaid, and to creditors of the said bankrupt, whereas preceding the filing of the said bankruptcy petition, the said bankrupt had substantial property, including, among other things, a bank account in the County National Bank of Newburgh, New York.

3. On or about the 28th day of January, 1963 and continuously thereafter until the date upon which the property was discovered, in the District of Connecticut, the said National Furniture & Appliance Stores, Inc., a corporation, and IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA knowingly and fraudulently did conceal from Sidney Waingrow and Abraham A. Katz, Receiver and Trustee respectively, as aforesaid, and from creditors in the said proceeding, property belonging to the estate of the said bankrupt, consisting of a bank account in the County National Bank of Newburgh, New York in that the defendants did during the period aforesaid remove money from the aforesaid premises of the bankrupt, and placed it in the bank account in the County National Bank of Newburgh, New York, for the purpose and with the intent of concealing such property.

All in violation of Title 18, United States Code, Section 152.

COUNT SIX

1. The Grand Jury realleges all the allegations of Paragraphs 1 to 4, inclusive, of Count One of this Indictment.

2. The Grand Jury realleges all the allegations of Paragraph 2 of Count Four of this Indictment.

3. On or about the 28th day of January, 1963, in the District of Connecticut, IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA as officers of the National Furniture & Appliance Stores, Inc., the bankrupt, and in contemplation of a bankruptcy proceeding by and against the said National Furniture & Appliance Stores, Inc. and with intent to defeat the bankruptcy laws, knowingly and fraudulently did transfer and conceal property of the said National Furniture & Appliance Stores, Inc., that is, they opened a bank account in the County National Bank of Newburgh, New York, and kept funds of the bankrupt corporation therein.

All in violation of Title 18, United States Code, Section 152.

COUNT SEVEN

1. The Grand Jury realleges all the allegations of Paragraphs 1 to 4, inclusive, of Count One of this Indictment.

2. At the time of the adjudication of the said National Furniture & Appliance Stores, Inc. as a bankrupt, and continuously thereafter until the date of the return of this indictment, only a part of the assets have been made available to the officers of the Court, appointed as aforesaid, and to creditors of the said bankrupt, whereas preceding the filing of the said

bankruptcy petition, the said bankrupt had substantial property, including, among other things, furniture, television and stereo sets, and General Electric heavy electric appliances.

3. From approximately February 1, 1963 until the date of the adjudication of the said National Furniture & Appliance Stores, Inc., as a bankrupt, in the District of Connecticut. IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA as officers of the National Furniture & Appliance Stores, Inc., and with intent to defeat the bankruptcy laws, knowingly and fraudulently did transfer and conceal property of the said National Furniture & Appliance Stores, Inc., that is, items including, among other things, furniture, television and stereo sets, and General Electric heavy electric appliances, the total approximate value of which was between $25,000 and $95,000.

All in violation of Title 18, United States Code, Section 152.

COUNT EIGHT

1. The Grand Jury realleges all the allegations of Paragraphs 1 to 4, inclusive, of Count One of this Indictment.

2. Between January 1, 1963 and the date of the adjudication of the said National Furniture & Appliance Stores, Inc. as a bankrupt in the District of Connecticut, IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA as officers of the National Furniture & Appliance Stores, Inc., the bankrupt and the defendants herein, and Paul Scata, Isadore (Sonny) Brickman and Van Slade, named herein as co-conspirators but not as defendants, and diverse other persons to the Grand Jury unknown, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Title 18, United States Code, Section 152.

3. It was a part of the said conspiracy that the defendants knowingly and fraudulently concealed from the Receiver and Trustee as aforesaid, and from creditors in the said proceeding, property belonging to the estate of the said bankrupt.

4. It was further a part of the said conspiracy that the defendants knowingly and fraudulently made a false oath as to material matters and accounts in and in relation to the aforesaid bankruptcy proceedings.

5. It was further a part of the said conspiracy that the defendants and co-conspirators as agents and officers of the National Furniture & Appliance Stores, Inc., the bankrupt, and in contemplation of a bankruptcy proceeding by and against the said National Furniture & Appliance Stores, Inc., and with intent to defeat the bankruptcy laws, knowingly and fraudulently did transfer and conceal property of the said National Furniture & Appliance Stores, Inc.

OVERT ACTS

At the times hereinafter mentioned, the defendants committed the following overt acts in furtherance of said conspiracy and to effect the objects thereof:

1. On or about January 28, 1963, a checking account was opened in the name of National Furniture & Appliance Stores, Inc. in the County National Bank in Newburgh, New York, by the defendants, NUNZIO SCATA and JOSEPH J. SCATA.

2. In February, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc. account in the County National Bank in Newburgh, New York, in the amount of $400

payable to the defendants, NUNZIO SCATA and JOSEPH J. SCATA.

3. In February, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc. account in the County National Bank in Newburgh, New York, in the amount of $900 payable to Sonny Brickman.

5. In February, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc. account in the County National Bank in Newburgh, New York, in the sum of $1,500 payable to cash.

6. In March, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc. account in the County National Bank in Newburgh, New York, in the amount of $2,500 payable to National Discount Stores.

7. In March, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc. account in the County National Bank in Newburgh, New York, in the amount of $500 payable to George Hyman, Attorney for Blue Bell Manufacturing Company.

9. On or about May 16, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc. account in the County National Bank in Newburgh, New York, in the amount of $464.51 payable to cash and signed by the defendants NUNZIO SCATA and JOSEPH J. SCATA.

11. Sometime in February, 1963, the exact date being unknown to the Grand Jury, General Electric Distribution and Sales Operations, represented in Connecticut by Louis Comenk, Supervisor of Sales and Distribution and Ray Winialski, Sales-

man, sold to the National Furniture & Appliance Stores, Inc. a railroad carload of large electrical appliances, which goods were delivered by General Electric via rail to the public railhead at Wethersfield, Connecticut. Paul Scata, acting as an employee of the National Furniture & Appliance Stores, Inc. and under orders from IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA, drove a tractor-trailer load of these appliances direct from the railroad siding in Wethersfield, Connecticut, to the National Discount Stores in Newburgh, New York.

12. On numerous occasions between December, 1962 and April, 1963, the exact dates of which are unknown to the Grand Jurors, Paul Scata, an employee of the National Furniture & Appliance Stores, Inc., transported truck loads of goods and merchandise from the bankrupt store in Rocky Hill to the National Discount Stores in Newburgh, New York. Goods transported include television and stereo sets, furniture and linoleum. Until late February or early March, he most often drove a 1954 Ford van-type truck with "Lombardi's" painted on its sides.

13. In late February or early March, the exact date being unknown to the Grand Jurors, Paul Scata, an employee of the National Furniture & Appliance Stores, Inc., drove a truck load of goods and merchandise from the bankrupt store in Rocky Hill, Connecticut, to the National Discount Stores in Newburgh, New York, in a 1954 Ford van-type truck with "Lombardi's" painted on its sides. Under instructions, Paul Scata left the 1954 Ford van-type truck at the National Discount Stores store in Newburgh, New York, and returned to Connecticut by other means.

14. In late April, 1963 or early May, 1963, the exact dates

being unknown to the Grand Jurors, Van Slade, who had been the manager of the National Furniture & Appliance Stores, Inc. until April, 1963 and was thereafter employed by the National Discount Stores in Newburgh, New York, was instructed by IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA and in fact did prepare fictitious invoices, showing that the value of the goods and merchandise shipped from the National Furniture & Appliance Stores, Inc. in Rocky Hill, Connecticut to National Discount Stores in Newburgh, New York, amounted to approximately $47,000.

15. On numerous occasions between December, 1962 and April, 1963, the exact dates of which are unknown to the Grand Jurors, Van Slade, the manager of the National Furniture & Appliance Stores, Inc., under orders from IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA, prepared and ordered shipment of goods and merchandise from the National Furniture & Appliance Stores, Inc. in Rocky Hill, Connecticut, to the National Discount Stores in Newburgh, New York. Goods and merchandise shipped included furniture, appliances and tires.

20. On or about March 29, 1963, Wholesale Tire and Battery Company of Hartford, Connecticut, sold 206 tires at a total value of approximately $3,665.28 to the National Furniture & Appliance Stores, Inc. with delivery made to the bankrupt store at Rocky Hill, Connecticut.

A TRUE BILL

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Foreman